SUPREME COURT OF THE UNITED STATES.

No. 104.—October Term, 1925.

Irene Hazel Corrigan and Helen Curtis, otherwise known as Mrs. A. L. Curtis, Appellants, vs. John J. Buckley. | Appeal from the Court of Appeals of the District of Columbia.

[May 24, 1926.]

Mr. Justice Sanford delivered the opinion of the Court.

This is a suit in equity brought by John J. Buckley in the Supreme Court of the District of Columbia against Irene H. Corrigan and Helen Curtis, to enjoin the conveyance of certain real estate from one to the other of the defendants.

The case made by the bill is this: The parties are citizens of the United States, residing in the District. The plaintiff and the defendant Corrigan are white persons, and the defendant Curtis is a person of the negro race. In 1921, thirty white persons, including the plaintiff and the defendant Corrigan, owning twenty-five parcels of land, improved by dwelling houses, situated on S Street, between 18th and New Hampshire Avenue, in the City of Washington, executed an indenture, duly recorded, in which they recited that for their mutual benefit and the best interests of the neighborhood comprising these properties, they mutually covenanted and agreed that no part of these properties should ever be used or occupied by, or sold, leased or given to, any person of the negro race or blood; and that this covenant should run with the land and bind their respective heirs and assigns for twenty-one years from and after its date.

In 1922, the defendant entered into a contract by which the defendant Corrigan, although knowing the defendant Curtis to be a person of the negro race, agreed to sell her a certain lot, with dwelling house, included within the terms of the indenture, and the defendant Curtis, although knowing of the existence and

terms of the indenture, agreed to purchase it. The defendant Curtis demanded that this contract of sale be carried out, and, despite the protest of other parties to the indenture, the defendant Corrigan had stated that she would convey the lot to the defendant Curtis.

The bill alleged that this would cause irreparable injury to the plaintiff and the other parties to the indenture, and that the plaintiff, having no adequate remedy at law, was entitled to have the covenant of the defendant Corrigan specifically enforced in equity by an injunction preventing the defendants from carrying the contract of sale into effect; and prayed, in substance, that the defendant Corrigan be enjoined during twenty-one years from the date of the indenture, from conveying the lot to the defendant Curtis, and that the defendant Curtis be enjoined from taking title to the lot during such period, and from using or occupying it.

The defendant Corrigan moved to dismiss the bill on the grounds that the "indenture or covenant made the basis of said bill" is (1) "void in that the same is contrary to and in violation of the Constitution of the United States," and (2) "is void in that the same is contrary to public policy." And the defendant Curtis moved to dismiss the bill on the ground that it appears therein that the indenture or covenant "is void, in that it attempts to deprive the defendant, the said Helen Curtis, and others of property, without due process of law; abridges the privilege and immunities of citizens of the United States, including the defendant, Helen Curtis, and other persons within this jurisdiction [and denies them] the equal protection of the law, and therefore, is forbidden by the Constitution of the United States, and especially by the Fifth, Thirteenth, and Fourteenth Amendments thereof, and the Laws enacted in aid and under the sanction of the said Thirteenth and Fourteenth Amendments."

Both of these motions to dismiss were overruled, with leave to answer. 52 Wash. L. Rep. 402. And the defendants having elected to stand on their motions, a final decree was entered enjoining them as prayed in the bill. This was affirmed, on appeal, by the Court of Appeals of the District. 299 Fed. 899. The defendants then prayed an appeal to this Court on the ground that such review was authorized under the provisions of § 250 of the Judicial Code—as it then stood, before the amendment made by the Jurisdictional Act of 1925—in that the case was one "involving the construction

or application of the Constitution of the United States" (par. 3), and "in which the construction of" certain laws of the United States, namely sections 1977, 1978, 1979 of the Revised Statutes, were "drawn in question" by them (par. 6). This appeal was allowed, in June, 1924.

The mere assertion that the case is one involving the construction or application of the Constitution, and in which the construction of Federal laws is drawn in question, does not, however, authorize this Court to entertain the appeal; and it is our duty to decline jurisdiction if the record does not present such a constitutional or statutory question substantial in character and properly raised below. *Sugarman* v. *United States*, 249 U. S. 182, 184; *Zucht* v. *King*, 260 U. S. 174, 176. And under well settled rules, jurisdiction is wanting if such questions are so unsubstantial as to be plainly without color of merit and frivolous. *Wilson* v. *North Carolina*, 169 U. S. 586, 595; *Delmar Jockey Club* v. *Missouri*, 210 U. S. 324, 335; *Binderup* v. *Pathe Exchange*, 263 U. S. 291, 305; *Moore* v. *New York Cotton Exchange*, No. 200, decided April 12, 1926.

Under the pleadings in the present case the only constitutional question involved was that arising under the assertions in the motions to dismiss that the indenture or covenant which is the basis of the bill, is "void" in that it is contrary to and forbidden by the Fifth, Thirteenth and Fourteenth Amendments. This contention is entirely lacking in substance or color of merit. The Fifth Amendment "is a limitation only upon the powers of the General Government," *Talton* v. *Mayes*, 163 U. S. 376, 382, and is not directed against the action of individuals. The Thirteenth Amendment denouncing slavery and involuntary servitude, that is, a condition of enforced compulsory service of one to another, does not in other matters protect the individual rights of persons of the negro race. *Hodges* v. *United States*, 203 U. S. 1, 16, 18. And the prohibitions of the Fourteenth Amendment "have reference to State action exclusively, and not to any action of private individuals." *Virginia* v. *Rives*, 100 U. S. 313, 318; *United States* v. *Harris*, 106 U. S. 629, 639. "It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject-matter of the Amendment." *Civil Rights Cases*, 109 U. S. 3, 11. It is obvious that none of these Amend-

ments prohibited private individuals from entering into contracts respecting the control and disposition of their own property; and there is no color whatever for the contention that they rendered the indenture void. And, plainly, the claim urged in this Court that they were to be looked to, in connection with the provisions of the Revised Statutes and the decisions of the courts, in determining the contention, earnestly pressed, that the indenture is void as being "against public policy", does not involve a constitutional question within the meaning of the Code provision.

The claim that the defendants drew in question the "construction" of sections 1977, 1978 and 1979 of the Revised Statutes, is equally unsubstantial. The only question raised as to these statutes under the pleadings was the assertion in the motion interposed by the defendant Curtis, that the indenture is void in that it is forbidden by the laws enacted in aid and under the sanction of the Thirteenth and Fourteenth Amendments. Assuming that this contention drew in question the "construction" of these statutes, as distinguished from their "application," it is obvious, upon their face, that while they provide, *inter alia*, that all persons and citizens shall have equal right with white citizens to make contracts and acquire property, they, like the Constitutional Amendment under whose sanction they were enacted, do not in any manner prohibit or invalidate contracts entered into by private individuals in respect to the control and disposition of their own property. There is no color for the contention that they rendered the indenture void; nor was it claimed in this Court that they had, in and of themselves, any such effect.

We therefore conclude that neither the constitutional nor statutory questions relied on as grounds for the appeal to this Court have any substantial quality or color of merit, or afford any jurisdictional basis for the appeal.

And while it was further urged in this Court that the decrees of the courts below in themselves deprived the defendants of their liberty and property without due process of law, in violation of the Fifth and Fourteenth Amendments, this contention likewise cannot serve as a jurisdictional basis for the appeal. Assuming that such a contention, if of a substantial character, might have constituted ground for an appeal under paragraph 3 of the Code provision, it was not raised by the petition for the appeal or by any assignment of error, either in the Court of Appeals or in this Court;

and it likewise is lacking in substance. The defendants were given a full hearing in both courts; they were not denied any constitutional or statutory right; and there is no semblance of ground for any contention that the decrees were so plainly arbitrary and contrary to law as to be acts of mere spoliation. See *Delmar Jockey Club* v. *Missouri, supra*, 335. Mere error of a court, if any there be, in a judgment entered after a full hearing, does not constitute a denial of due process of law. *Central Land Co.* v. *Laidley*, 159 U. S. 103, 112; *Jones* v. *Buffalo Creek Coal Co.*, 245 U. S. 328, 329.

It results that, in the absence of any substantial constitutional or statutory question giving us jurisdiction of this appeal under the provisions of § 250 of the Judicial Code, we cannot determine upon the merits the contentions earnestly pressed by the defendants in this court that the indenture is not only void because contrary to public policy, but is also of such a discriminatory character that a court of equity will not lend its aid by enforcing the specific performance of the covenant. These are questions involving a consideration of rules not expressed in any constitutional or statutory provision, but claimed to be a part of the common or general law in force in the District of Columbia; and, plainly, they may not be reviewed under this appeal unless jurisdiction of the case is otherwise acquired.

Hence, without a consideration of these questions, the appeal must be, and is

Dismissed for want of jurisdiction.

A true copy.

Test:

Clerk, Supreme Court, U. S.